

### **REMARKS**

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application.

### **Disposition of the Claims**

Claims 1, 3-7, 10, 26-28, 30, 31, 33, 35, 36, and 38 were pending in the present application. By way of this reply, claim 36 is canceled without prejudice or disclaimer. Accordingly, claims 1, 3-7, 10, 26-28, 30, 31, 33, 35, and 38 are now pending in the present application. Claims 1, 33, and 35 are independent. The remaining claims depend, either directly or indirectly, from independent claims 1 and 35.

### **Amendments to the Claims**

By way of this reply, claims 1, 33, and 35 are amended for clarification. No new subject matter is added by way of these amendments. Support for these amendments may be found, for example, in paragraphs [0026] and [0030] of the instant Specification, in the corresponding figures, and in the originally filed claims.

### **Examiner Interview**

Applicant thanks the Examiner for courtesies extended during the Examiner Interview of March 5, 2010. During the interview, Applicant's representative(s) and the Examiner discussed the subject matter of the invention, as well as the current rejection and potential amendments. No

agreement was reached at the conclusion of the interview. Applicant has reviewed the Examiner's Interview Summary dated March 16, 2010, and agrees with its contents.

**Rejection under 35 U.S.C. § 103**

Claims 1, 3-7, 10, 26-28, 30, 31, 33, 35, 36, and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Admitted Prior Art ("AAPA"), in view of U.S. Patent Publication No. 2002/0010783 ("Primak"), and in further view of U.S. Patent Publication No. 2005/0125487 ("O'Connor"). By way of this reply, claim 36 is canceled and thus the rejection is moot as to claim 36. As for the remaining claims, for the reasons set forth below, this rejection is respectfully traversed.

MPEP § 2143 states that "[t]he key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit." Further, when combining prior art elements, the Examiner "must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference...." MPEP § 2143(A); *KSR International Co. v. Teleflex Inc.*, 550 USPQ2d 1385 (2007). Applicant respectfully asserts that the Examiner has failed to show sufficient evidence to establish a *prima facie* case of obviousness with respect to the pending claims. Specifically, the Examiner has failed to establish a *prima facie* case of obviousness for at least the following reasons.

Amended independent claim 1 recites, in part, “send the first request to replace the first replicated service to the first subset of nodes using the mesh interconnect, generate, after determining the first subset of nodes does not comprise a replacement for the first replicated service, a second request to replace the first replicated service, [and] send the second request to replace the first replicated service to the second subset of nodes using the mesh interconnect.” Amended independent claims 33 and 35 recite similar limitations. The Examiner relies upon Primak and O’Connor to disclose or render obvious the requests sent between nodes. *See* Action, p. 4. Applicant respectfully asserts that Primak and O’Connor, either alone or in combination, fail to disclose or render obvious the above-cited limitation.

Specifically, Primak is directed toward load balancing between a cluster of servers. *See, e.g.,* Primak, paragraph [0015]. Although Primak discloses redirecting a connection from a first server to a second server, the second server is chosen based on records residing on the first server. *See id.*, paragraph [0040]. Once the server is chosen, the first server initiates the connection between the client and second server by sending a SYN packet to the second server. *See id.*, paragraph [0039]. Primak fails to disclose sending a first request to a first subset of nodes, followed by a second request to a second subset of nodes to determine a suitable node, and therefore may not be properly relied upon to disclose or render obvious the above-cited limitation of claims 1, 33, and 35. *See* O’Connor, paragraphs [0013], [0018].

O’Connor similarly fails to disclose or render obvious the above-cited limitation of claims 1, 33, and 35. Although O’Connor does disclose distributing requests to multiple nodes, O’Connor fails to disclose sending a first request to a first subset of nodes, followed by a second

request to a second subset of nodes, and therefore may not be properly relied upon to disclose or render obvious the above-cited limitation of claims 1, 33, and 35. *See* O'Connor, paragraphs [0013], [0018]. Nor does the AAPA provide that which Primak and O'Connor lack.

Amended independent claim 1 also recites, in part, "the first request specifies the first subset of nodes...[and] the second request specifies the second subset of nodes." Amended independent claims 33 and 35 include similar limitations. The Examiner relies upon O'Connor to disclose distributed requests. *See* Action, p. 4. However, Applicant respectfully asserts that O'Connor similarly fails to disclose or render obvious this limitation. Specifically, the communication between the nodes in O'Connor is a request for bids. *See* O'Connor, paragraphs [0013] and [0018]. O'Connor fails to disclose or render obvious requests specifying a subset of nodes, and therefore may not be properly relied upon to disclose or render obvious "the first request specifies the first subset of nodes...[and] the second request specifies the second subset of nodes," as recited in amended independent claims 1, 33 and 35. Nor do Primak and the AAPA provide that which O'Connor lacks.

In view of the above, it is clear that the AAPA, Primak, and O'Connor, either alone or in combination, fail to disclose or render obvious at least the limitations of amended independent claims 1, 33, and 35 cited above. Dependent claims 3-7, 10, 26-28, 30, 31, and 38, which depend from claims 1 and 35, are patentable over the cited art for at least the same reasons. The Examiner, therefore, has failed to establish a *prima facie* case of obviousness with regard to the pending claims, and accordingly, withdrawal of the rejection is respectfully requested.

**Conclusion**

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 33226/358001).

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Respectfully submitted,

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